IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 07.12.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.18338 of 2003

Thippeswamy .. Petitioner

Vs.

1.The Group Commandant,
Central Industrial Security Force Unit,
Group Headquarters,
"D" Block, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.

2.The Deputy Inspector General,
Central Industrial Security Force,
Group Headquarters, "D" Block,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.

3.The Inspector General of Police,SWS,
Central Industrial Security Force,
RCFL Complex, Chembur,
Mumbai-400 074. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records relating to the order passed by the third respondent in his order No.V-11014/57/SZ/LC/SWS/2002/2144 dated 07.03.2003 confirming the order passed by the second respondent in his appellate order No.V-11014/45/2002/L&R(SZ)/5195 dated 18.07.2002 and the order passed by the first respondent in his final order No.V-15014/09/2001/GHC/AD-V17/1689 dated 30.03.2002, quash the same and to direct the respondents to take the petitioner into the strength of CISF as Constable with all monetary benefits.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mr.P.Wilson, SCGSC.,

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ORDER

(Order of the Court was delivered by P. SATHASIVAM, J.)

The petitioner challenges the orders of the respondents dated 30.03.2002, 18.07.2002 and 07.03.2003, in and by which, he was dismissed from service and the same was confirmed by the Appellate and Revisional Authorities.

2. The petitioner is a Constable in Central Industrial Security Force Unit, NNP., Mysore and he was dealt with under Rule 34 of CISF Rules 1969 on the following charges.

Article of Charge No.I

"Most indiscipline and gross misconduct in that No.921402987 Constable Thippe Swamy of CISF Unit, NNP, Mysore, broken the pane glass of the door of the Unit barrack, damaged Government property and forcibly pull and pushed No.754390109 HC/GD R.H.Nanjappa out of the barrack on 23.08.2001 at about 20.40 hours which tantamounts to an unbecoming of a good member of the Force. Hence the charge.

Article of Charge No.II

Most indiscipline and gross misconduct in that No.921402987 Constable Thippe Swamy of CISF Unit, NNP, Mysore, had assaulted HC/GD R.H.Nanjappa and injured by biting his right hand on 23.08.2001 at about 20.40 hours which tantamounts to an unbecoming of a good member of the Force. Hence the charge.

Article of Charge No.III

Most indiscipline and gross misconduct in that No.921402987 Constable Thippe Swamy of CISF Unit, NNP, Mysore, was found absent from the Unit Lines when check roll call of barrack personnel were conducted at about 23.45 hours and 23.55 hours on 23.08.2001 which tantamounts to an unbecoming of a good member of the Force. Hence the charge."

3. It is not in dispute that the petitioner was issued notice for enquiry. Though he participated in the enquiry, he has not let in any evidence in support of his case. Before the Enquiry Officer, as many as 14 persons were examined as PWs 1 to 14. Among the witnesses, the evidence of Pws.1 to 5 and 7 are relevant.

4. According to PW1, while he was chatting with Head Constable viz., V.J.Ramappa in the barrack of CISF Unit, NNP, Mysore, he saw Constable Thippe Swamy of CSIF Unit entering the barrack by kicking the glass door of the barrack and pushed out Ramappa-PW2. When PW1 had questioned the petitioner as to why he had broken the glass

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pane of the door, he caught hold of his shirt by his left hand and threatened him that he would kill him and nobody could save. He further deposed that he was separated from Constable Thippe Swamy by Constable S.M.Nandakumar(PW5). During separation, the petitioner had bitten the right hand of PW1 and caused bleeding injury. He also deposed that he immediately lodged a complaint with the police in Metagalli Police Station on 24.08.2001 and got medically examined in the KRS Government Hospital, Mysore, and returned to the barrack. PW1 produced the copy of the FIR, medical certificate as well as the copy of the statement given by him.

5. The Heard Constable viz., Ramappa was examined as PW2. He explained his presence along with PW1 at the time of the incident. He also deposed that when the petitioner had opened the glass door of the barrack forcibly, the glass pane got broken.

6. The Head Constable-Munimensappa was examined as PW3. According to him, on 23.08.2001 at 20.03 hours, Constable Thippe Swamy came to the barrack, in which himself and PW1`-R.H.Nanjappa were staying. He deposed that Constable Thippe Swamy knocked the door, which was kept closed, with the help of a stone and pushed the door by force and hence, the glass pane of the door got broken. He also deposed that Constable Thippe Swamy picked up a glass piece and entered into the barrack.

7. One Gurupadappa was examined as PW4. He deposed that after receiving the telephonic message from the Constable B.K.Pillai about the quarrel between PW1-Nanjappa and Contable Thippe Swamy at barrack, he immediately rushed to the barrack and enquired. He further deposed that he also saw the broken glass pane of the barrack door in which PW1 is staying and informed the matter to the Unit Commandant.

8. The Constable-S.M.Nandakumar was examined as PW5. He mentioned about the quarrel between the petitioner and PW1-R.H.Nanjappa.

9. The Constable-B.K.Pillai was examined as PW7. He also corroborated the statement of other witnesses.

10. We are not concerned about the other persons examined on the side of the prosecution. Though the learned counsel for the petitioner has submitted that due to enmity between the petitioner and R.H. Nanjappa-PW1, he entered PW1's room and had a quarrel, the evidence of PWs 1 to 5 and 7 amply show as to how the petitioner entered the room of PW1 and damaged the glass pane. It is clear from the evidence that the petitioner has knocked the door, which was kept closed and thereafter he pushed the door by force. Hence the glass pane of the door got broken. In those circumstances, it cannot be claimed that the petitioner has merely entered the room of PW1 and quarrelled with him.

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11. Regarding causing injury to PW1 by the petitioner, no doubt, except PW1, others have not stated anything about the same. However, as rightly observed by the Disciplinary, Appellate and Revisional Authorities, apart from the firm statement of PW1, immediately after the incident, PW1 had lodged a complaint with the police in Metagalli Police Station and also medically examined in the K.R.S. Government Hospital, Mysore. The complaint and the medical certificate were also produced and marked as Exs.P1 and P2. There is no reason to disbelieve those documents. Though it is pointed out that the criminal case filed against the petitioner ended in acquittal, it is immaterial while considering the same in the departmental proceedings.

12. Apart from the conduct of the petitioner, opening the door in a forcible manner and damaging the glass pane and biting PW1, the petitioner also absented himself from duty on 23.08.2001 for which there is no acceptable explanation at all. Considering all these aspects/materials, the Disciplinary Authority imposed a penalty of dismissal from service. The Appellate and Revisional Authorities have also considered the grievance expressed by the petitioner and taking note of the proved charges and finding that the punishment imposed is also proportionate and reasonable, they confirmed the order of the Disciplinary Authority and rejected the appeal and the revision.

13. On going through the evidence of PWs 1 to 5 and 7 and the conclusion of the Disciplinary Authority, we are unable to accept the argument of the learned counsel for the petitioner. Though the learned counsel for the petitioner has pleaded leniency in the quantum of punishment, considering the young age and family circumstance of the petitioner and also of the fact that the incident had occurred due to enmity between himself and PW1, we are not inclined to accede to his request. The charges levelled against him are serious in nature and proved beyond reasonable doubt by acceptable evidence.

14. The learned Senior Central Government Standing Counsel appearing for the respondents has brought to our notice that PW1 is the higher officer and the way in which the petitioner forcibly entered into his barrack and had broken the glass pane and caused injury to him, cannot be treated as an ordinary incident.

15. We agree with his contention and we are not inclined to show any leniency even in imposing punishment. In fact, this aspect was also considered by all the authorities and rejected the similar request.

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16. In the light of what is stated above, we do not find any valid ground for interference. Consequently, the writ petition fails and the same is dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Group Commandant,
Central Industrial Security Force Unit,
Group Headquarters,
"D" Block, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.

2.The Deputy Inspector General,
Central Industrial Security Force,
Group Headquarters, "D" Block,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.

3.The Inspector General of Police,SWS,
Central Industrial Security Force,
RCFL Complex, Chembur,
Mumbai-400 074.

ONE CC TO MR.P. WILSON, ASST. SOLICITOR GENL SR 61065

ONE CC TO MR.M. MD. IBRAHIM ALI, ADVOCATE SR 60757

W.P.No.18338 of 2003

07.12.2006

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